

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF PAYSON

THIS AGREEMENT is entered into 12 June, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF PAYSON acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The State has approved the exchange of \$86,846.00 in Highway User Revenue Funds (HURF) to the Town for **design** of improvements to McLane Road, and such funds will be repaid to the State by withholding from the Central Arizona Association of Governments (CAAG) federal funds and the obligation authority for federal funds in the amount of \$106,000.00.

4. The State has approved the exchange of \$492,128.00 in HURF to the Town for the **construction** of improvements to McLane Road and such funds will be repaid to the State by withholding from the CAAG federal funds and the obligation authority for federal funds in the amount of \$600,666.00.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

See Resolution # 1666

NO. 25310
Filed with the Secretary of State
Date Filed: 06/12/02

Betsy Bayless
Secretary of State

By: Willy V. Graenewald

II. SCOPE OF WORK

1. The Town will:

- a. Provide design of the improvements contemplated for McLane Road. Provide the State suitable documentation of design together with invoices.
- b. Be responsible for any additional funds required for design of the project, and for any claims for extra compensation for whatever reason. Comply with all applicable State laws, rules and regulations.
- c. Invoice the State in federal fiscal year 2004, an amount not to exceed \$86,846.00 for reimbursement for the costs of design.
- d. Call for bids and award one or more construction contracts for the project. Administer same and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason.
- e. Upon completion, approve and accept the project as complete and provide maintenance.
- f. Invoice the State an amount not to exceed \$492,128.00 on or after October 1, in federal fiscal year 2005, for reimbursement for the costs of construction.
- g. Take full responsibility of all Project costs until the time of federal fiscal year conversion. If federal funds are not available the Town is responsible for the total costs of the Project.

2. The State will:

- a. In federal fiscal year 2004 and within 30 days after receipt and approval of a design invoice, pay the Town HURF funds in the amount of \$86,846.00.00 for design.
- b. In federal fiscal year 2005 and within 30 days after receipt and approval of a construction invoice, pay the Town HURF funds in the total amount of \$492,128.00 for construction.
- c. In federal fiscal year 2004 withhold from CAAG federal funds and the obligation authority of federal funds, in the amount of \$106,000.00 for design.
- d. In federal fiscal year 2005 withhold from CAAG federal funds and the obligation authority of federal funds, in the amount of \$600,666.00 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The Town assumes full responsibility for the acquisition of right of way, right-of-way plans, project design, plans and specifications, reports, construction and the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred

by the State, any of its departments, agencies, officers or employees shall include in the event of any action, and court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712-7424
lgrandy@dot.state.az.us

Town of Payson
Town Manager
303 A North Beeline Highway
Payson, AZ 85541
FAX: (928) 472-7490

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

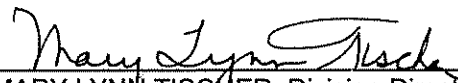
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF PAYSON, ARIZONA

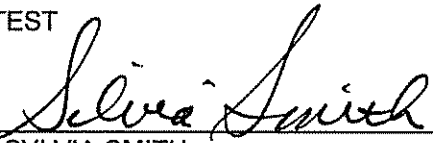
STATE OF ARIZONA

Department of Transportation

By 
RAY SCHUM, Mayor

By 
MARY LYNN TISCHER, Division Director
Transportation Planning Division

ATTEST

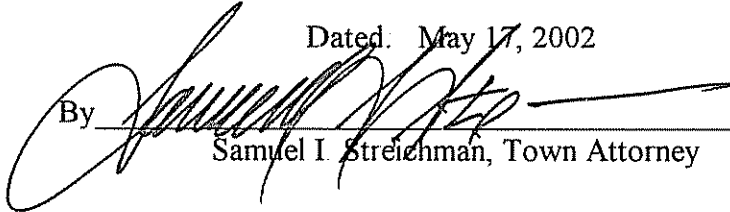
By 
SYLVIA SMITH
Town Clerk

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed the foregoing Intergovernmental Agreement Between the State of Arizona and the Town of Payson and approved it as to form and has determined that said agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Dated: May 17, 2002

By

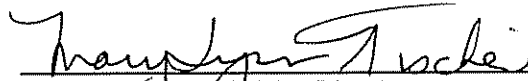
A handwritten signature in black ink, appearing to read 'Samuel I. Streichman', is written over a horizontal line. The signature is fluid and cursive.

Samuel I. Streichman, Town Attorney

RESOLUTION

BE IT RESOLVED on this 1st day of APRIL, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the TRANSPORTATION PLANNING DIVISION, to enter into an agreement with the TOWN OF PAYSON, for the purpose of defining responsibilities for the design and construction of roadway improvements to McLane Road.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Director of Transportation Planning Division, for approval and execution.



MARY LYNN TISCHER, Director
Transportation Planning Division
for VICTOR M. MENDEZ, Director



JANET NAPOLITANO
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION
1275 WEST WASHINGTON STREET, PHOENIX, AZ 85007-2926

TRN Main: (602) 542-1680
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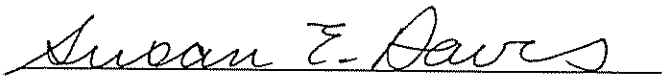
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-0587TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED May 30, 2002.

JANET NAPOLITANO
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:ggt

Enc.